

1 **BILL LOCKYER,**
Attorney General
2 **ALBERT NORMAN SHELDEN,**
Acting Senior Assistant Attorney General
3 **MICHELE R. VAN GELDEREN,** State Bar No. 171931
Deputy Attorney General
4 300 So. Spring Street, Suite 500
Los Angeles, California 90013

5
6 Attorneys for Plaintiff,
7 The People of the State of California
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 v.

15 RALPHS GROCERY COMPANY, an Ohio
corporation by operation of and as successor
16 by merger with RALPHS GROCERY
COMPANY, a Delaware corporation,

17 Defendants.
18
19

Case No.:

**COMPLAINT FOR CIVIL PENALTIES,
INJUNCTION AND OTHER
EQUITABLE RELIEF**

20 Plaintiff, the People of the State of California ("Plaintiff" or the "People"), by its
21 attorney, Bill Lockyer, Attorney General of the State of California, is informed and believes, and
22 on such information and belief alleges, as follows:

23 **PARTIES**

24 1. Defendant RALPHS GROCERY COMPANY ("Ralphs" or "Defendant")
25 is an Ohio corporation by operation of, and as successor by merger with, Ralphs Grocery
26 Company, a Delaware corporation. Ralphs operates over 300 supermarkets under various
27 banners such as Ralphs Supermarkets, Cala Foods and Bell Markets (the "Stores") throughout
28 California, including in San Diego County.

"THE GREAT ESCAPE" PROMOTION

2. Beginning in or about the spring of 2003, Ralphs advertised the "The Great Escape" promotion, by which Club Card customers of the Stores would receive a certificate good for a free two-night hotel stay for each \$400 in qualifying purchases made at the Stores between June 4 and July 15, 2003 (the "Great Escape Promotion.") Ralphs advertised the Great Escape Promotion to the public by various methods including circulars distributed to the public, in-store announcements and in-store signs. Consumers were not informed in those advertisements that conditions and restrictions applied to the offer. The advertisements stated only that consumers could see the Store or the customer service desk at the Store for details.

3. Consumers who inquired at the Store's customer service desk were given a one-page information sheet, which listed significant conditions and restrictions that were not disclosed in advertisements for the Great Escape Promotion. Among other things, the information sheet specified that:

- A. travel dates must be processed at least 45 days in advance;
- B. consumers must provide three choices of requested travel dates that are at least 14 days apart;
- C. reservations must be booked by August 15, 2003; and
- D. travel must be completed by December 15, 2003.

4. Upon request, Ralphs gave Club Card customers who earned the two-night hotel stay a "Reservation Redemption Certificate" (the "Certificate"). This Certificate contained additional conditions and restrictions that had not been disclosed previously to consumers. Among other things, the Certificate provided that:

- A. the customer is responsible for taxes;
- B. all awards are "subject to program space availability"; and
- C. holiday and heavy travel periods may not be available.

5. Hundreds of thousands of Ralphs Club Card customers who qualified for a free two-night stay through The Great Escape Promotion requested and received a Certificate at

1 the Store, and tens of thousands of those customers attempted to redeem their Certificate, either
2 by mailing it to the address provided or by phoning the number on the Certificate.

3 6. Of the qualifying Club Card customers who attempted to redeem their
4 Certificates, most did not receive their award. Among other things:

- 5 A. those customers were falsely told that they did not qualify because
6 they filled out the Certificate incorrectly;
- 7 B. those customers were falsely told that all three of their
8 date/location choices were unavailable;
- 9 C. those customers who redeemed their Certificates by calling the
10 phone number designated on the Certificate did not receive the
11 award as promised;
- 12 D. those customers who attempted to redeem their Certificates by
13 phone were unable to reach a representative; and
- 14 E. those customers who mailed in the Certificate received no
15 response.

16 7. Certain customers who attempted to redeem their Certificates, but did not
17 receive the hotel award, were offered either a \$50 or \$100 coupon toward a two-night hotel stay.
18 Ralphs offered the \$50 coupon to customers who, according to Ralphs, did not comply with the
19 Great Escape Promotion's terms and conditions; Ralphs offered the \$100 coupon to customers
20 who had fulfilled all of the Great Escape Promotion's terms and conditions and had properly
21 redeemed the Certificate, but nevertheless did not receive the hotel award to which Ralphs
22 acknowledged they were entitled.

23 8. Ralphs stated to its customers that it offered the coupons to them as an
24 expression of appreciation to those customers who did not receive a hotel award, but in reality
25 Ralphs used the coupon process to extract a release of claims from those customers. A broad
26 release and waiver of liability was included in the "claim form" that customers were required to
27 sign in order to redeem the coupon. Customers were not adequately informed of the existence
28 and significance of the release and waiver.

1 9. The reverse side of the coupons also listed significant conditions and
2 restrictions, including, but not necessarily limited to, the following:

3 A. The coupon could be redeemed only at high-end hotels like
4 Marriott and Renaissance Hotels, in contrast to the original Great
5 Escape Promotion, which included lower-priced hotels like
6 Marriott Courtyard, Fairfield Inn and Ramada Inn. Because
7 consumers would be required to pay the balance of the room
8 charges, redemption of the coupon could be prohibitively
9 expensive for some consumers.

10 B. The coupon could be used only for “publicly listed and available
11 room rates and packages, excluding catering, group and contract
12 rates,” and could not be used in conjunction with certain other
13 discounts. As a result, the consumers could be required to pay a
14 much higher rate than would be available to them in the
15 marketplace, potentially rendering the coupon worthless.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

18 **(FALSE OR MISLEADING STATEMENTS)**

19 10. The People reallege and incorporate by reference paragraphs 1 through 9,
20 inclusive, of this Complaint.

21 11. Defendant has violated Business and Professions Code section 17500 by
22 making or causing to be made false or misleading statements with the intent to induce members
23 of the public to make purchases at Ralphs stores. These false or misleading statements include,
24 but are not necessarily limited to, Defendant’s representations that Club Card customers would
25 receive a certificate good for a free two-night hotel stay for each \$400 in qualifying purchases
26 that they made at the Stores between June 4 and July 15, 2003. These statements were untrue or
27 misleading in that, inter alia,

- 1 A. Defendant did not provide the award to the majority of customers
2 who qualified to receive it;
3 B. Defendant did not disclose the significant conditions and
4 restrictions that applied to the Great Escape Promotion.
5 12. Defendant knew, or by the exercise of reasonable care should have known,
6 that these statements were false or misleading at the time they were made.

7 **SECOND CAUSE OF ACTION**

8 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
9 **(UNFAIR COMPETITION)**

10 13. The People reallege and incorporate by reference paragraphs 1 through 12,
11 inclusive, of this Complaint.

12 14. Defendant has engaged in the following acts of unfair competition as
13 defined in Business and Professions Code section 17200:

- 14 A. Defendant has violated Business and Professions Code section
15 17500, as alleged above in the First Cause of Action;
16 B. Defendant failed to conduct an appropriate investigation of, and/or
17 to exercise due diligence regarding third parties involved in
18 administering and/or fulfilling the Great Escape Promotion;
19 C. Defendant failed to disclose to consumers all of the terms,
20 conditions and restrictions of Great Escape Promotion in a clear
21 and conspicuous manner;
22 D. Defendant failed to provide awards to the Club Card customers
23 who fulfilled all of the terms and conditions of the Great Escape
24 Promotion;
25 E. Defendant offered coupons to Club Card customers for the stated
26 purpose of expressing appreciation to those who did not receive an
27 award pursuant to the Great Escape Promotion, but in fact offered
28 the coupons to obtain a waiver and release from those customers

without adequately disclosing that redemption of the coupons would have that effect;

F. Defendant offered coupons to its Club Card customers without adequately disclosing that significant restrictions applied, which diminished the value of those coupons to consumers.

G. Defendant disclaimed liability to its Club Card customers for the Great Escape Promotion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Code sections 17203 and 17535, that Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant, be permanently enjoined from making untrue or misleading statements in violation of Business and Professions Codes sections 17500 as alleged in the First Cause of Action.

2. Pursuant to Business and Professions Code section 17203, that Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant, be permanently enjoined from committing acts of unfair competition as alleged in the Second Cause of Action.

3. Pursuant to Business and Professions Code section 17536, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendant for each violation of Business and Professions Code section 17500, as proved at trial.

4. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendant for each violation of Business and Professions Code section 17200, as proved at trial.

5. That Defendant be ordered to make restitution of any money, property, goods or services that it may have been acquired by its violations of Business and Professions Code sections 17200 and 17500 as alleged in this complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. That the People recover their costs of suit.

7. Such other and further relief that the Court deems just and proper.

DATED: July 21, 2004

BILL LOCKYER,
Attorney General
ALBERT NORMAN SHELDEN,
Acting Senior Assistant Attorney General
MICHELE R. VAN GELDEREN
Deputy Attorney General

By _____
MICHELE R. VAN GELDEREN

Attorneys for Plaintiff,
the People of the State of California